IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 652 of 1997

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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REVABEN WD/O MANAJI CHANDAJI MALI & 3 - Petitioner(s)

Versus

MAFATLAL NATHALAL PADHIYAR & 4 - Respondent(s)

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Appearance :
MR DK ACHARYA for Petitioners.
None for Respondent(s) : 1,
MR AJ PATEL for Respondent(s) : 1.2.1
MS MINI NAIR AGP for Respondent(s) : 2 - 5.
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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
10th SEPTEMBER, 2007

ORAL JUDGMENT

This petition was heard and judgment was pronounced on 13th July, 2007. However, before the

judgment was signed, the petition was re-heard *today*. After haring the learned advocates, the Court makes order as under :-

This is a *writ* petition preferred under *Article* 226 of the Constitution of India against the judgment and order dated 19th June, 1996 passed by the Gujarat Revenue Tribunal, Ahmedabad in Review Application No. TEN.C.A.12/1994. The petitioners before this Court are the successors of the original tenant one Manaji Chandaji of the lands in question.

The subject matter of the dispute are the lands Survey Nos. 237/1, 249, 251 & 261 admeasuring 21-Acres-19 gunthas in aggregate, situated at village-Doma, Taluka Deesa; and the land Survey No. 526/1 & 526/2, admeasuring 14 Acres – 31 gunthas in aggregate, situated at Juna Deesa. The respondent no. 1 is the successor of the original owner of the disputed lands. The said Manaji Chandaji [hereinafter referred to as, "***the tenant***"] became the deemed purchaser of the disputed lands in accordance with the Bombay Tenancy & Agricultural Lands Act, 1948. After the death of the said Manaji Chandaji, the disputed lands devolved upon his heirs – the present

petitioners. Respondent no.1-Bai Hiraben, widow of the original owner was a blind person. She had applied for retention of certain lands out of the disputed lands for personal cultivation for her *bona fide* requirement. The said application was rejected by the Mamlatdar & ALT. That order became final by judgment and order of the Gujarat Revenue Tribunal passed in Revision Applications Nos. TEN.B.A 185/76 & TEN.B.A 186/76.

In the proceedings initiated under the Gujarat Agricultural Land Ceiling Act, 1960 [hereinafter referred to as, "***the Act of 1960***"], by Order dated 9th August, 1983 made in Ceiling Case No. 2175 of 1981, the Mamlatdar & Agricultural Land Tribunal, Palanpur held that the total holding of the tenant was within the ceiling limit. Feeling aggrieved, the aforesaid Bai Hiraben preferred Ceiling Appeal No.19 of 1983 under Section 35 of the Act of 1960. The said appeal came to be allowed by the Assistant Collector on 25th April, 1984. The matter was remanded to the Mamlatdar & ALT for reconsideration after hearing the said Bai Hiraben. Since the aforesaid order of remand, the Mamlatdar & ALT, Deesa reconsidered the matter. The

Mamlatdar by his order dated 30th March, 1988 held that the tenant's holding for the purpose of the Act of 1960 was 66.25 Acres which was larger than the ceiling area. The Mamlatdar held that the land Survey No. 526/1, admeasuring 13 Acres-30 Gunthas, situated at Juna Deesa was the excess holding and that the original owner Bai Hirabai was entitled to restoration of the said land. Feeling aggrieved, the petitioners preferred Ceiling Appeal No. 1 of 1988 which came to be rejected by the Deputy Collector by his Order dated 30th December, 1988. Feeling aggrieved, the petitioners preferred Ceiling Revision Application No. TEN.B.A.414/1989 before the Gujarat Revenue Tribunal. In the said Revision Application, the Tribunal was pleased to hold that in any view of the matter, on the appointed day the tenant had a major son-one Devaji Manaji. The tenant was, therefore, entitled to hold two units of the land. The ceiling limit being 42 acres and the total holding of the tenant being 66 acres, he did not hold excess land. Accordingly, the Tribunal by its judgment and order dated 13th August, 1993 allowed the revision application and *set-aside* the orders made by

the authorities below.

Feeling aggrieved, the respondent Bai Hirabai preferred Review Application No. TEN.B.A.12/1994. According to the said applicant, the Tribunal had erred in relying upon the school leaving certificate to hold that the aforesaid Devaji Manaji was an adult on the appointed day. She relied upon other documents on record particularly the vaccination certificate and the birth certificate of one Bhemaji Manaji, the younger brother of the aforesaid Devaji Manaji to submit that the said Devaji Manaji indeed was not an adult on the appointed day. The Tribunal by its judgment and order dated 19th June, 1996 was pleased to hold that the Tribunal had earlier erred in relying upon the school leaving certificate in preference to the birth certificate and the vaccination certificate to hold that the aforesaid Devaji Manaji was an adult on the appointed day. Thus, the Tribunal held that on the appointed date, the said Devaji Manaji had not attained majority. The tenant was, therefore, not entitled to hold more than one unit of land and upheld the orders of the authorities below. Feeling aggrieved, the petitioners

have preferred the present petition.

Mr. Acharya has assailed the *impugned* judgment passed by the Tribunal in Review Application No. TEN.B.A.12/1994. He has submitted that the Tribunal is not conferred with the power of review of its own order. The application for review was, therefore, not maintainable. The Tribunal has erred in entertaining and deciding the said application. In support of his submission, Mr. Acharya has relied upon the judgments in the matters of ***Gabhaji Lilaji v. Vora Saiyadbhai Kadarbhai*** [1980 GLR 961]; of ***State of Gujarat v. K.S Patel & Ors.*** [1994 (1) GLH 341]; of ***Nathekhan Sojalkhan Bihari v. Mamlatdar, Vadgam & Ors.*** [1984 (2) GLR 1473]; of ***State of Gujarat v. Jat Laxmanji Talasji*** [1988 (2) GLR 1036]; of ***Atulbbhai Balabhai Patel v. State of Gujarat & Ors.*** [1999 (3) GCD 2492; of ***Bhogilal M. Vaishnav v. State of Gujarat*** [1994 (1) GLR 326 {*Guj*}]; of ***Nadoda Ganesh Punjabhai v. State of Gujarat*** [AIR 1995 Gujarat 172].

The petition is contested by Mr. Patel. He has submitted that the school leaving certificate, birth certificate, and vaccination certificate were the documents on record. The Tribunal had, however,

failed to consider the birth certificate and the vaccination certificate produced by the respondent. He has submitted that what the respondent sought was a procedural review. The power of such review is inherent in every judicial authority and also the Revenue Tribunal. He has supported the *impugned* order of the Tribunal and submitted that the learned Tribunal was right in relying upon the birth certificate and the vaccination certificate in preference to the school leaving certificate. In any view of the matter, considering the extent of holding of the tenants and the need of the respondent, she was entitled to restoration of the excess land. This Court should not, in exercise of its discretionary *jurisdiction* under *Article* 227 of the Constitution, interfere with the *impugned* order made by the Tribunal.

It appears that the *impugned* order dated 19th June, 1996 was passed by the Tribunal in Review Application No. TEN.C.A.12/1994 in absence of the learned advocate Mr. Acharya. The petitioners, therefore, filed Restoration Application No. TEN.DA.44/1996. It was urged that on the date of

hearing on 12th June, 1996, learned advocate had suddenly taken ill and could not attend the matter. The order dated 19th June, 1996 made on Review Application No. TEN.C.A 12/1994 be recalled and the review application be heard *afresh*. The said Application No. TEN.DA.44/1996 came to be rejected by the Tribunal on 31st December, 1996. Feeling aggrieved, the petitioners have preferred the present petition. Initially, the petitioners had challenged the above referred Order dated 31st December, 1996. However, later by an amendment allowed to be made, the petitioners have also challenged the Order dated 19th June, 1996 made on Review Application No. TEN.C.A 12/1994. Though the matter is at large before this Court, I am of the opinion that the Tribunal below ought to have allowed the Restoration Application No. TEN.DA.44/1996 and to have heard the review application *afresh*. In absence of the entire record before me, the ends of justice demand that the review application is heard by the Tribunal *afresh* after giving opportunity of hearing to both the parties.

In above view of the matter, the petition is partly allowed. The *impugned* judgment and order dated

31st December, 1996 passed by the Gujarat Revenue Tribunal, Ahmedabad in Restoration Application No. TEN.D.A.44/1996 is *quashed* and set-aside. The Restoration Application No. TEN.D.A.44/1996 stands allowed. The *impugned* judgment and order dated 19th June, 1996 passed in Review Application No TEN.C.A 12/1994 is *quashed* and set aside. The Review Application No. TEN.C.A 12/1994 is revived and remitted to the Gujarat Revenue Tribunal for hearing and decision *afresh*.

It is clarified that this Order is made without considering the matter on merits and the question of maintainability of the review application. The parties to the review application will be at liberty to approach the Tribunal for early hearing of the Application. Considering the passage of time, the Tribunal may give suitable precedence to the hearing of Review Application.

I am informed that feeling aggrieved by the above referred judgment and order dated 13th August, 1993 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A 414/1989, the respondents had preferred Special Civil Application

No. 2559 of 1997 before this Court. The said writ petition has been disposed of by this Court [*Coram* : **R.S Garg, J.**] on 20th March, 2007 in the following terms:-

> Shri A.J Patel, learned counsel for the petitioner submits that the petitioner be allowed to withdraw the writ application with liberty to take appropriate steps to challenge the original order passed by the Gujarat Revenue Tribunal by filing a writ application or to challenge the final order to be passed in Special Civil Application No. 652 of 1997 as and when the cause of action accrues in favour of the petitioner. The prayer appears to be justified and reasonable. The petition is accordingly dismissed as withdrawn with liberty aforesaid. Rule is discharged. No costs. Interim relief, if any, is vacated.

In the event, the above referred Review Application No. TEN.CA.12/1994 is decided against the respondents, the respondents shall be at liberty to challenge such order as well as the above referred order dated 13th August, 1993 passed in Revision Application No. TEN.B.A 414 of 1989. Rule is made absolute to the aforesaid extent. The parties shall bear their own cost.

{Ms. R.M Doshit, J.}

*Prakash**